IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7564 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANTOSHBHAI SODABHAI BHARVAD

Versus

STATE OF GUJARAT

Appearance:

MR JJ YAJNIK for Petitioner

MR KT DAVE G. P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 08/02/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. J. J. Yagnik for the petitioner and learned A.G.P. Mr. K. T. Dave for the respondents Nos. 1, 2 and 3.

1. The detention order dated 3.6.1999 passed by the respondent No. 2 - District Magistrate, Bhavnagar against the petitioner in exercise of powers conferred under Section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA" for short) is challenged in the present proceeding under Article 226 of the Constitution of India.

2. That the grounds of detention served and supplied to the detenu/petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure - "B", inter-alia indicate that three cases are registered at "C" and "A" Division Police Station, Bhavnagar against the petitioner on 28.4.1998, 15.4.1999 and 16.4.1999 in respect to offences made punishable under Chapter 16 and 17 of I.P.C. That the said cases are pending for trial in the Court.

Over and above, four witnesses on assurance of their anonymity, have given statements dated 31.5.1999 regarding ant-isocial activities of the petitioner and have narrated the alleged incident prior to 20 to 25 days, 10 to 12 days, 14 to 15 days and 8 to 10 days respectively.

3. That on the basis of the said material, the respondent No. 2 as detaining authority, was satisfied that the petitioner is a 'dangerous person' within the meaning of Section 2(c) of "PASA". That the enforcement of general provision of law being insufficient to prevent the petitioner from continuing his prejudicial activities, therefore, in order to prevent the petitioner from continuing his such activities, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at bar on behalf of the petitioner that privilege claimed by the Detaining Authority in respect of four witnesses as stated in the grounds of detention, can not be said to be a genuine privilege. That there is no indication on the contemporaneous record that the Detaining Authority himself was satisfied in respect of so called fear expressed by the respective witnesses, thereby, the petitioner was deprived of an opportunity to make an effective representation, which has violated the Constitutional mandate under Article 22(5) and the continued detention of the petitioner is illegal.

5. That in the matter of JAKIRBHAI RAHIMBHAI NAGORI VS. DISTRICT MAGISTRATE, MEHSANA reported vide 1996 (1) G.L.H. p.300 this Court having relied on the decision of the Division Bench of this Court rendered in the case of KOLI ASHWIN VS. STATE OF GUJARAT in Spl. Criminal Application no.1812/93 decided on 12th September, 1994 has held that for exercising power under Sec.9(2) of "PASA", what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose, he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. That the satisfaction recorded otherwise claiming such a privilege cannot be said to be genuine. That in the said case, the detaining authority has endorsed only one word "verified" on the statement of anonymous witnesses while, in the instant case, scrutiny of original statements suggest that, in all, three statements of anonymous witnesses are initially recorded by PSI and verified by DYSP. That the detaining authority has merely put his signature below it. That the verification recorded by DYSP also does not disclose any fear expressed by such witness against disclosing his identify on account of fear of the detenu.

6. That on further scrutiny of papers suggest that in the grounds of detention, the Detaining Authority has observed that, " I had personally called the witnesses before me and had verified the statements given by them and on the basis of same, I am satisfied." The copy of the said statement produced at running pages at 53 to 67, discloses that initially, the statements were recorded by the Police Inspector, "B" Division and were verified by the Dy. Superintendent. However, the detaining authority, the District Magistrate, Bhavnagar has merely put his signatures below each of the statements. In the context of the said fact, it has become doubtful whether the Detaining Authority himself has verified the fear expressed by the witnesses to exercise the privilege under Section 9(2) of "PASA" in respect to said four witnesses. That the petitioner has raised a specific contention vide para - 7 (e) of the petition and the respondent No. 2, though has filed an affidavit-in-reply dated 16.12.1999, has failed to explain the said contention so as to satisfy the Court that there was sufficient, cogent and convincing material before the Detaining Authority to claim privilege under Section 9(2) of "PASA". Hence, in the facts and circumstances of the

case, I am constrained to hold that privilege claimed by

the Detaining Authority in the instant case in respect to four witnesses can not be said to be bonafide. As a result, it is required to be held that petitioner / detenu was deprived of his valuable right to make effective representation against his detention, which has violated the Constitutional mandate under Article 22(5) and the continued detention of the detenu being illegal, the impugned order is required to be quashed and set aside.

7. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the foregoing discussion, the petition is allowed. The impugned order dated 03.06.1999, passed by the respondent No. 2 against the petitioner is hereby quashed and set aside. The petitioner / detenu Santoshbhai Sodabhai Bharwad is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute to that extent.

(A.K.Trivedi,J.)

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